DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202 GERALD ROME, Securities Commissioner for the State of Colorado, Plaintiff, v. US CAPITAL, INC., LEE WEINSTEIN, and JOHN KORAL, Defendants.	☐ COURT USE ONLY ☐
JOHN W. SUTHERS, Attorney General JENNIFER H. HUNT, 29964* Assistant Attorney General CHARLES J. KOOYMAN, 43595* Assistant Attorney General Ralph L. Carr Judicial Building 1300 Broadway, 10th Floor Denver, CO 80203 Hunt Tel: (720) 508-6401 Kooyman Tel: (720) 508-6440 Fax: (720) 508-6037 Jennifer.Hunt@state.co.us Charles.Kooyman@state.co.us *Counsel of Record	Case No.: Courtroom:
COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF	

Plaintiff, Gerald Rome, Securities Commissioner for the State of Colorado, by and through his counsel, the Colorado Attorney General, submits his Complaint against the Defendants and alleges as follows:

JURISDICTION

1. Plaintiff Gerald Rome is the Securities Commissioner for the State of Colorado (the "Commissioner"), and is authorized pursuant to § 11-51-703, C.R.S., to administer all provisions of the Colorado Securities Act (the "Act"). Pursuant to §

11-51-602, C.R.S., the Commissioner is authorized to bring this action against the Defendants and to seek temporary, preliminary, and permanent injunctive relief and other equitable relief against the Defendants upon sufficient evidence that the Defendants have engaged in or are about to engage in any act or practice constituting a violation of any provision of the Act.

2. Pursuant to § 11-51-602(1), C.R.S., venue is proper in the district court for the City and County of Denver, Colorado.

SUMMARY OF ALLEGATIONS

3. From June 2009 through approximately August 2010, Defendant US Capital, Inc. ("US Capital"), operating through its officers Lee Weinstein and John Koral, fraudulently solicited and obtained modifications of promissory notes issued to investors representing total investments of more than $7.8 million in US Capital's hard-money mortgage lending operation. In doing so, Defendants have violated the anti-fraud provisions of the Act by making material misrepresentations and omissions to the investors. The note holders had originally purchased and held the promissory notes believing their investments to be secured by underlying real estate. When the real estate market declined in 2008 and US Capital was unable to pay interest payments due on the promissory notes, Weinstein and Koral asked the note holders to modify their notes by reducing the interest and increasing the terms of the notes, without disclosing either that the promissory notes were not adequately secured or the existence of several material conflicts of interest between Defendants and the note holders. Ultimately, US Capital was unable to meet its obligations to the note holders or other creditors and went bankrupt. The promissory note holders did not recover their investments in the modified notes.

DEFENDANTS

4. US Capital is a Colorado corporation formed in 1996 for the purpose of operating as a hard-money mortgage lender. The last known address of US Capital is 2975 Valmont Road, Suite 230, in Boulder, Colorado.

5. Lee Weinstein ("Weinstein") is an adult male individual whose last known residential address is 2670 Winding Trail Dr. in Boulder, Colorado. Weinstein was an officer and control person of US Capital at all times relevant to this Complaint.

6. John Koral ("Koral") is an adult male individual whose last known residential address is 5322 Odin Dr. in Boulder, Colorado. Koral was an officer and control person of US Capital at all times relevant to this Complaint

GENERAL ALLEGATIONS

US Capital's Operations

7. US Capital was created by Weinstein, who is an attorney, in 1996 as a commercial asset-based finance business. Koral joined the company shortly after its formation, after which time Koral and Weinstein each owned 50% of the company. All business decisions for US Capital were made by Koral and Weinstein.

8. US Capital operated as a so-called "hard-money lender," meaning that it specialized in making loans to commercial borrowers who may not qualify for traditional bank financing to purchase real estate. In order to fund these loans, US Capital solicited and obtained investments from individuals in exchange for promissory notes entitling the note holders to a certain amount of interest, generally 9% or 10%, over a period of years. The promissory note investors were entitled to periodic interest payments over the terms of the notes.

9. Prior to 2011, investors understood from representations made by Koral and Weinstein that the loans made with their funds would be secured by real estate collateral held by US Capital, that the collateral would be personally inspected and evaluated by the principals or agents of US Capital to arrive at a "quick sale value," and that loans would not exceed 50% of the distressed value to ensure that they could be repaid if the property had to be foreclosed. Note holders believed that their promissory notes were secured by first position liens held by US Capital on the underlying properties.

Weinstein's and Koral's Subordination of Investor Promissory Notes to Other Debt

10. Beginning as early as 2002 – and unbeknownst to the investors – Weinstein and Koral developed a practice of forming separate LLCs jointly owned by the two of them for the purpose of property development. Each individual LLC was created to develop an individual property, and was generally named for that property. Although there were many more of these LLCs at various times, as of December 31, 2008, Weinstein and Koral jointly owned at least 10 such LLCs, including:

a. 1944 Arapahoe, LLC;

b. Bear Run II, LLC;

c. DAMI, LLC;

d. Ivy Ranch II, LLC;

e. Orchard Investments, LLC;

f. Top Hill, LLC;

g. Village at Hilltop, LLC;

h. US Capital Partners, LLC;

i. US Capital Partners NC, LLC;

j. US Stone and Gravel, LLC;

(collectively referred to in this Complaint as the "US Capital LLCs"). This information was not communicated to promissory note holders prior to November 2010.

11. The US Capital LLCs borrowed funds from US Capital to finance their property development activities. From 2009 through 2011, approximately 60%-70% of the loans made by US Capital were loans to US Capital LLCs. This information was not communicated to promissory note holders prior to November 2010.

12. US Capital obtained additional funds for its lending activities with loans or lines of credit from banks. For example, between May 2009 and August 2011, the company carried over $1.6 million in debt from AmFirst Bank and more than $4.7 million from Mile High Bank. In connection with these bank loans, US Capital re-assigned properties meant to secure the note holders to serve as collateral to the bank debt. This information was not communicated to promissory note holders prior to November 2010.

13. Much of US Capital's bank debt actually represented money lent to various US Capital LLCs. Between May 2009 and August 2011, approximately 80% to 90% US Capital's purported bank debt (as stated on its balance sheets) represented money loaned to US Capital LLCs. US Capital, Weinstein, and Koral served as unlimited guarantors of these loans. This information was not communicated to promissory note holders prior to August 2011.

14. In addition to the transfer of US Capital's collateral to banks, Koral, with Weinstein's assistance, assigned interests in Top Hill, LLC (one of the US Capital LLCs) as additional collateral to secure Koral's personal debt of approximately $900,000. This assignment effectively encumbered US Capital's property to secure Koral's debt and further subordinated the promissory note holders' security in the underlying collateral. This information was not communicated to promissory note investors prior to August 2011.

15. In short, the majority of US Capital's bank debt related to loans made to US Capital LLCs or Koral, and collateral that was theoretically securing the investors' promissory notes was assigned so that bank debt would be repaid before any remainder could be used to return money to investors.

US Capital's Solicitation of Promissory Note Modifications

16. In late 2007 and early 2008, the United States real estate market began to decline. As values of properties held as collateral for US Capital loans fell, the loan-to-value ratios were undermined, US Capital's equity eroded, and the investors' supposedly secured interests became even more unsecured.

17. On or around June 2, 2009, Defendants informed the note holders that US Capital would no longer be able to make the interest payments on the promissory notes and, commencing with the interest payment due on June 1, 2009, was suspending all further payments on its debt to the note holders. According to a June 2 letter to note holders, US Capital blamed the closure of one of its bank lines of credit and the failure of at least six pending sales of US Capital asset properties.

18. The June 2 note holder letter, signed by Weinstein, outlined a business plan going forward, which included strict enforcement of the obligations of US Capital borrowers, foreclosure of the collateral securing the loans where necessary, and best efforts to market the properties for sale. Defendants stated that they intended to continue making new loans with available funds to generate income to fund current and future efforts and would need to maintain an office and continue to pay officers, staff, and outside consultants. Defendants promised to provide a pro forma summary of expected costs and expenses along with a current balance sheet within 10 days.

19. The June 2nd letter also asked the note holders to execute modifications of their existing notes, stating that the modifications were necessary to "accomplish a successful transition out of these very difficult financial times and to return to a level of success that we have enjoyed for many years." Defendants asked each note holder to agree to an extension of the terms of their existing notes for the funds currently invested to December 31, 2009, and a reduction in the interest rate to 5%. Interest would accrue during this time period in lieu of interest payments. Eleven note holders responded to this appeal and executed modifications of their notes for modified amounts totaling approximately $4.5 million.

20. In soliciting these modified promissory notes, Defendants did not explain that the collateral purportedly securing the notes had been pledged as collateral for US Capital bank loans, that a large portion of the money lent out by

US Capital had gone to the US Capital LLCs, owned by Weinstein and Koral, or that US Capital assets had been used to secure Koral's individual debt.

21. On or about June 16, 2009, Defendants sent the promised balance sheet, pro-forma, and description of the collateral associated with US Capital's loan portfolio. Although the balance sheet listed two bank lines of credit and many US Capital LLCs were included on the list of collateral, the documents did not identify the ownership of the LLCs and did not explain that many of the properties had been transferred as collateral for the bank loans.

22. On or about September 23, 2009, Defendants sent another update to the note holders, stating:

> To further support the cooperative spirit that has been shown by all in these difficult economic times and to clarify the company's intentions regarding distributions, please be advised that, except for secured creditors and after sufficient funds have been retained to continue the operations of the company to achieve the best outcome that we can, proceeds generated from sales or loan payoffs will be distributed first to the Note holders, equitably and on a pro-rata basis, until their Notes are paid, before any distributions are made to the Company and its owners.

No information was provided in this letter about the security of the notes.

23. The promissory note modifications executed in June 2009 expired on December 31, 2009. In January 2010, Defendants solicited another round of promissory note modifications, both from note holders whose modifications had expired and from those who had not previously executed a modification. The new modifications would extend the maturity date of the notes to June 30, 2010. The holders of 23 notes executed modifications in response to this request, eleven of which were second modifications. The modified amounts of these notes totaled more than $7.8 million.

24. When the January 2010 modifications expired, US Capital was still not in a position to pay off the notes. Accordingly, Defendants made one more request for modifications of the modified promissory notes on or about July 9, 2010. This time, fifteen note holders signed modifications (seven for the second time and eight for the third time), for a total modified amount of approximately $5.7 million. Once again, nothing in the note holder update soliciting the modifications explained the security position of the modified notes or the fact that US Capital collateral had been transferred to secure other debt.

25. Defendants continued to send periodic updates to the note holders from the fall of 2009 through August 2010 describing the efforts to market the collateral and return funds to the investors. These updates suggested that the promissory notes were adequately secured and failed to disclose the degree to which they were unsecured.

26. In September 2010, after some of the note holders expressed concern regarding the security of the promissory notes, Defendants sent an update that, for the first time, suggested the potential need to provide more security for the notes. Then, in a letter dated November 17, 2010, Defendants finally provided an explanation of the note holders' security positions with respect to the US Capital collateral and disclosed the existence, ownership, and purpose of the US Capital LLCs. The November 17 letter was the first time Defendants informed the note holders that Weinstein and Koral had transferred US Capital collateral into separate LLCs and that the promissory notes may have been subordinated to other debt.

27. On or about November 22, 2010, Defendants sent the note holders an agreement signed by Weinstein on behalf of US Capital and on behalf of Bear Run, LLC, Bear Run II, LLC, US Capital Partners, LLC, and US Stone and Gravel, LLC (five of the US Capital LLCs), asking the note holders to also sign. The purpose of the agreement was to provide additional security for any note holder who executed the agreement by requiring the five signatory US Capital LLCs to assume and agree to pay the notes in an amount not to exceed each note holder's proportional interest. Each note holder who signed the agreement would receive deeds of trust or mortgages for the properties held by the US Capital LLCs and would become secured creditors with respect to those properties. The agreement also required the note holders to execute a power of attorney appointing a member of a newly-formed note holder committee to act on their behalf. The promissory notes of the note holders who did not sign the agreements would remain unsecured and subordinated to other debt.

28. As the note holders began executing and returning signed agreements, US Capital proceeded to form a note holder committee tasked with working with Weinstein and Koral on management of the company and plans to repay the notes. The company continued to struggle to remain solvent throughout 2011, as the banks increased their efforts to recover on their loans. By August, not only had tensions between the note holders and Defendants increased, but the working relationship between Koral and Weinstein had deteriorated. In the August 8, 2011 note holder update, Weinstein finally disclosed to the note holders the fact that the Top Hill property had been used as security for Koral's $900,000 personal debt.

29. Ultimately, US Capital was unable to continue operations. The note holder committee filed an involuntary bankruptcy in November 2011.

30. The modified promissory notes solicited and obtained by Defendants are securities under the Act as defined in § 11-51-201(17) in that they are notes, evidence of indebtedness, or investment contracts.

MISREPRESENTATIONS OR OMMISSIONS OF MATERIAL FACT

31. In connection with the offer and sale of securities between June 2009 and at least August 2010, Defendants misrepresented and failed to disclose the following material facts:

a. Weinstein and Koral borrowed money from US Capital to operate LLCs owned by Weinstein and Koral that were used to purchase properties;

b. US Capital assigned collateral supposedly securing the investors' promissory notes to banks in order to secure bank loans, thereby subordinating the note holders' supposedly secured interests in US Capital;

c. LLCs owned by Weinstein and Koral borrowed money from Mile High Bank and assigned collateral purportedly securing the promissory notes to the bank, making US Capital the unlimited guarantor of such loans, further subordinating the note holders' supposedly secured interest in US Capital to cover the LLCs' debt;

d. Koral, with Weinstein's assistance, used collateral supposedly securing the promissory notes to secure his own personal debt;

e. Weinstein, Koral, and the US Capital LLCs were in the position of potentially realizing profits, if they were able to sell properties underlying their loans at prices exceeding the debt due, while simultaneously leaving unrelated losses to be absorbed by the US Capital note holders if such properties could not be sold at prices in excess of the debt due;

f. The debt encumbrances and subordination of the note holders' supposedly secured interests created inherent conflicts of interest between Defendants and the investors.

CLAIM FOR RELIEF
(Securities Fraud)
§ 11-51-501, C.R.S.

32. Paragraphs 1 through 31 above are incorporated herein by reference.

33. By soliciting and obtaining modifications of US Capital promissory notes, Defendants engaged in the offer and sale of securities in and from the State of Colorado as defined by § 11-51-201(13), C.R.S.

34. The conduct described above in this Complaint constitutes violations of the Act in that in connection with the offer, sale, or purchase of securities in Colorado, Defendant, directly or indirectly:

a. employed a device, scheme, or artifice to defraud;

b. made written and oral untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or

c. engaged in acts, practices or courses of business which operated and would operate as a fraud and deceit on investors,

all in violation of § 11-51-501(1), C.R.S.

35. Accordingly, Defendants are liable to the Commissioner for damages under § 11-51-602(2), C.R.S., based upon violations of § 11-51-501(1)(a), (b), and (c), C.R.S.

36. The Commissioner is entitled to an award of damages, interest, costs, attorneys' fees, restitution, disgorgement and other equitable relief on behalf of persons injured by the conduct of Defendants pursuant to §§ 11-51-602(2), C.R.S., based upon violations of § 11-51-501, C.R.S. The Commissioner is also entitled to a temporary, preliminary and permanent injunction pursuant to § 11-51-602, C.R.S., based upon violations of § 11-51-501, C.R.S., against Defendants, their agents, servants, employees, successors and attorneys-in-fact, as may be; any person who, directly or indirectly, through one or more intermediaries, controls, or is controlled by or is under common control with Defendants; and all those in active concert or participation with Defendants.

WHEREFORE, Plaintiff prays for relief as follows:

1. For preliminary and permanent injunctive relief against Defendants, and each of their officers, directors, agents, servants, employees, and successors; any person who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with the Defendants, and all those in active concert of participation of Defendants, enjoining the Defendants' violations of the Act, or successor statute.

2. For a judgment in an amount to be determined at trial against the Defendants for restitution, disgorgement, and other equitable relief pursuant to § 11-51-602(2), C.R.S., and for damages, rescission, interest, costs, reasonable attorney's fees, and such other legal and equitable relief as the Court deems appropriate, pursuant to § 11-51-602(2), C.R.S., all on behalf of persons injured by the acts and practices of the Defendant constituting violations of the Act.

3. For such other and further relief as the Court deems proper.

Dated this 26th day of September, 2014.

JOHN W. SUTHERS
Attorney General

Under C.R.C.P. 121, § 1-26(7), a printable copy of this electronically filed document is maintained in the Office of the Attorney General

/s/ Jennifer H. Hunt

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